

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Application No.:	09/752,925	Inventor:	Williams, Dauna R.
Filed:	January 2, 2001	Attorney Docket No.:	237312.000001
		Confirmation No.:	1241
Title: INTERACTIVE TELEVISION SCRIPTING			
Examiner:	Alvarez, Raquel	Art Unit:	3622

Commissioner for Patents
U.S. Patent and Trademark Office
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APPEAL BRIEF - PATENTS

Sir:

This is an Appeal Brief in connection with the decisions of the Examiner in a Non-Final Office Action mailed December 17, 2010, and in connection with the Notice of Appeal filed April 18, 2011. Applicant hereby requests a three month extension of time. Please charge the small entity extension fee to Troutman Sanders Deposit Account 20-1507.

It is respectfully submitted that the present application has been more than twice rejected.

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is Dauna R. Williams of New York, New York.

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any other appeals, interferences, or judicial proceedings that will directly affect, will be directly affected by, or will otherwise have a bearing on the decision in this appeal.

III. STATUS OF CLAIMS

The following summarizes the status of the claims in the present application:

Claims 18-20 and 22-48 are pending in the present application;

Claims 1-17 and 21 were canceled;

Claims 18-20 and 22-48 stand non-finally rejected; and

Claims 18-20 and 22-48 are being appealed.

IV. STATUS OF AMENDMENTS

All amendments have been entered to date.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The claimed subject matter is directed to novel systems and apparatus for managing complex television episode development and providing television interactivity to viewers. In accordance with the claims of record, customized television episode development is accomplished by providing queries to audience members by way of a multi-tier question hierarchy, where each question is assigned to a tier based on when chronologically the response generated by the question can be integrated into the story.

Independent claims 18 and 46 are the claims that are argued separately in this appeal. It should be understood that the citations below to the original disclosure as providing support for

the claimed features are merely exemplary and do not limit the claim features to only those citations.

18. A programmed controlled computer system comprising (Abstract; p. 1, ¶ 1; p. 4, ¶ 1):

a computer processor selectively programmed to provide an electronic query to a member of an audience for a current episode for a show (Abstract; p. 1, ¶¶ 2, 3; cl. 1), wherein said show comprises a series of episodes having a common theme and characters with subsequent episodes advancing a story line of said show (p. 22, ¶ 1; cl. 2), said query provided to said member by way of a multi-tier question hierarchy comprising separate tiers of questions (p. 4, ¶¶ 6, 7; p. 6, Table 1; cl. 4), each question assigned to a tier based on when chronologically the response generated by the question can be integrated into said story (p. 4, ¶¶ 6, 7; p. 6, Table 1; cl. 4);

a computer processor selectively programmed for receiving and storing in memory said feedback messages (Abstract; p. 1, ¶¶ 2, 3; cl. 1); and

a computer processor selectively programmed for aggregating a plurality of collected feedback messages into data and electronically analyzing said data to provide a report that is utilized in development of the story line and/or characters in one or more subsequent future episodes for said show (p. 1, ¶ 1; p. 2, ¶¶ 1, 2; p. 23, ¶ 2; cl. 7, 8),

wherein said processors may be one processor or a plurality of interconnected processors (Abstract; p. 1, ¶ 1; Figure 1).

46. An apparatus comprising (Abstract; p. 1, ¶ 1; Figure 1):

a computer that transmits Internet queries to an audience of a broadcast show (Abstract; p. 1, ¶¶ 2, 3; cl. 1), wherein said broadcast show is one of a series of shows (p. 22, ¶ 1; cl. 2), with at least one subsequent show of said series of shows not yet broadcast (p. 22, ¶ 1; cl. 2, 9), said Internet queries provided to said audience by way of a multi-tier question hierarchy

comprising separate tiers of questions (p. 4, ¶¶ 6, 7; p. 6, Table 1; cl. 4), each question assigned to a tier based on when chronologically the response generated by the question can be integrated into said broadcast show (p. 4, ¶¶ 6, 7; p. 6, Table 1; cl. 4);

a computer that receives and stores responses to said Internet queries (Abstract; p. 1, ¶¶ 2, 3; cl. 1);

a computer that tracks each of said responses based on one or more characteristics of corresponding responders (p. 25, ¶ 2; p. 4, ¶ 2; Abstract), said one or more characteristics comprising geographic area of responder (p. 25, ¶ 2; p. 4, ¶ 2; Abstract), and

a computer for making storyline recommendations based on said responses (p. 1, ¶ 1; p. 25, ¶ 2; p. 4, ¶ 2; Abstract), said recommendations based on one or more geographic areas of said responders (p. 25, ¶ 2; p. 4, ¶ 2; Abstract),

wherein said computers may be one computer or a plurality of computers (Abstract; p. 1, ¶ 1; Figure 1).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 18-20 and 22-45 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,134,531 to Trewitt et al. (hereinafter “Trewitt”) in view of U.S. Patent Application No. 2004/0177002 to Abelow (hereinafter “Abelow”).

Whether claims 46-48 are unpatentable under 35 U.S.C. § 103(a) over Trewitt in view of Abelow further in view of U.S. Patent No. 6,968,565 to Slaney et al. (hereinafter “Slaney”).

ARGUMENTS

A. Legal Standards

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

B. Claims 18-20 and 22-45 are Patentable over Trewitt in view of Abelow.

Claims 18-20 and 22-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Trewitt in view of Abelow.

Prior to the present invention, writers of television shows were constrained to creating their art without receiving any indication of public acceptance or other audience feedback for recent episodes. The system taught by the present application leverages the advent of internet technology to provide a means for obtaining immediate audience feedback, which can be used to pro-actively adjust the course of a television show to enrich story development and enhance audience acceptance by fulfilling audience expectations. Additionally, the invention teaches a system that takes advantage of the unique production schedules of television shows (see for example, specification pages 9-21).

Independent claim 18 recites:

A programmed controlled computer system comprising:
 a computer processor selectively programmed to provide an electronic query to a member of an audience for a current episode for a show, wherein said show comprises a series of episodes having a common theme and characters with subsequent episodes advancing a story line of said show, **said query provided to said member by way of a multi-tier question hierarchy comprising separate tiers of questions, each question assigned to a tier based on when chronologically the response generated by the question can be integrated into said story;**
 a computer processor selectively programmed for receiving and storing in memory said feedback messages; and
 a computer processor selectively programmed for aggregating a plurality of collected feedback messages into data and electronically

analyzing said data to provide a report that is utilized in development of the story line and/or characters in one or more subsequent future episodes for said show,

wherein said processors may be one processor or a plurality of interconnected processors. (Emphasis added).

The Office Action cites Abelow ¶¶ 0166, 0275 and 0278 to teach the above emphasized features of claim 18 (Office Action page 4). Abelow discloses a system for receiving feedback from consumers regarding products or services in order to facilitate the future improvement of the product or service. ¶ 0166 of Abelow discloses that a Customer Design Instrument (CDI) can be provided with products, and the CDI may contain pre-programmed trigger points. When a trigger point is reached, a module of the CDI will request that the customer participate in “Development Interaction” (to give feedback on the product). This information is delivered to the vendor, where it may be used to help improve the product. ¶ 0275 of Abelow discloses that a vendor may want “probes” to be triggered when a product’s use begins, when major product functions are operated, and when the product’s use ends. Abelow teaches that the “pre-use” and “post-use” probes may be standard probes, in order to reduce the custom programming needed. Accordingly, only “on-task” triggers require custom programming. For example, a trigger may be programmed for when a customer presses a particular function key. ¶ 0278 of Abelow discloses that triggers may include counters, in order to ask different questions as the user becomes more familiar with the product. None of these sections of Abelow, nor the reference generally, teach or suggest a multi-tier question hierarchy comprising separate tiers of questions, where each question is assigned to a tier based on when chronologically the response generated by the question can be integrated into a story. In particular, Abelow teaches customized questions to a product user based on the *user’s* experience with the product, but fails to disclose questions assigned to tiers based on when chronologically the responses generated can be

integrated into the *product development* (the destination of the user's input). See specification pages 4-7 for detailed examples of the types of tiers that may be used as well as time-frames for integration for each of these tiers (such as, Editor-Driven Query, Director-Driven Query, Writer-Driven Query, and Online Request). These features of claim 18 take advantage of the unique production schedules of television shows, which much of the specification is directed to (see for example, pages 9-21). Abelow is not directed to television shows and therefore the unique tiered query system of claim 18, based on television production schedules, is not remotely suggested by the reference. The Office Action does not allege that Trewitt teaches these features, nor does it. Thus, Trewitt and Abelow, both singularly and in combination fail to teach or suggest these features.

Claims 19-20 and 22-45 are dependent on claim 18, and are believed to be allowable for at least the same reasons relating to claim 18 described above.

Additionally, although page 2 of the Office Action includes a rejection of claims 19, 20, and 22, the Office Action fails to address the specific features these claims. As set forth in MPEP § 2143.03, "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385. Thus, this rejection of claims 19, 20, and 22 is improper.

Accordingly, Applicant respectfully requests that this rejection be reversed.

C. Claims 46-48 are Patentable over Trewitt in view of Abelow further in view of Slaney.

Claims 46-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Trewitt in view of Abelow further in view of Slaney.

Independent claim 46 recites features similar to those of claim 18 discussed above. The Office Action does not allege that Slaney teaches these features, nor does it. Accordingly, claim 46 is believed to be allowable for at least the same reasons discussed above.

Accordingly, Applicant respectfully requests that this rejection be reversed.

CONCLUSION

In view of the foregoing, Appellant respectfully requests the reversal of the rejections asserted in the Office Action, and requests allowance of all of the pending claims. If any fees are due that have not been expressly authorized, please charge such fees to Troutman Sanders LLP Deposit Account No. 20-1507.

Respectfully submitted,

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Claims Appendix

1-17. (Canceled)

18. (Previously presented) A programmed controlled computer system comprising:
a computer processor selectively programmed to provide an electronic query to a member of an audience for a current episode for a show, wherein said show comprises a series of episodes having a common theme and characters with subsequent episodes advancing a story line of said show, said query provided to said member by way of a multi-tier question hierarchy comprising separate tiers of questions, each question assigned to a tier based on when chronologically the response generated by the question can be integrated into said story;
a computer processor selectively programmed for receiving and storing in memory said feedback messages; and
a computer processor selectively programmed for aggregating a plurality of collected feedback messages into data and electronically analyzing said data to provide a report that is utilized in development of the story line and/or characters in one or more subsequent future episodes for said show,

wherein said processors may be one processor or a plurality of interconnected processors.

19. (Previously presented) The system of claim 18 wherein said show comprises a television or online series of situational comedies, episodic shows, or soap operas.

20. (Previously presented) The system of claim 18 wherein said computer processor selectively programmed to provide an electronic query is operable to send at least one of: streaming media, non-streaming online media, and television video data.

21. (Canceled).

22. (Previously presented) The system of claim 18 wherein said query is used in conjunction with an additional tier of such queries whose responses can be immediately incorporated into a television show production.

23. (Previously presented) The system of claim 18 wherein said receiving is performed via the Internet.

24. (Previously presented) The system of claim 18 wherein said feedback messages are received from one or more viewer portals.

25. (Previously presented) The system of claim 18 wherein said data is transmitted to one or more of: advertisers, producers, directors, writers, broadcasters, and studios.

26. (Previously presented) The system of claim 18 wherein said feedback messages are in a form operable to be incorporated into a show scheduled for broadcast within seven days.

27. (Previously presented) The system of claim 18 wherein said query is tailored to elicit a feedback message configured to engender viewership.

28. (Previously presented) The system of claim 18 wherein said query comprises a prequel-mercial.

29. (Previously presented) The system of claim 28 wherein said prequel-mercial query is configured to enable non-temporally limited feedback.

30. (Previously presented) The system of claim 28 wherein said prequel-mercial is configured to garner feedback for initial episodes.

31. (Previously presented) The system of claim 28 wherein said prequel-mercial is configured to educate an audience about said show.

32. (Previously presented) The system of claim 28 wherein said prequel-mercial is configured to promote said show.

33. (Previously presented) The system of claim 28 wherein said prequel-mercial is configured to provide portions of a storyline that are supportive of said show.

34. (Previously presented) The system of claim 33 wherein said prequel-mercial comprises product placement advertisement within said storyline.

35. (Previously presented) The system of claim 18, wherein said query is an editor-driven query.

36. (Previously presented) The system of claim 35, wherein said editor-driven query is directed to a drop-in scene for a subsequent episode in said show.

37. (Previously presented) The system of claim 18, wherein said query is a director-driven query.

38. (Previously presented) The system of claim 37, wherein said director-driven query is directed to a subplot storyline for said show.

39. (Previously presented) The system of claim 18, wherein said query is a writer-driven query.

40. (Previously presented) The system of claim 39, wherein said writer-driven query is directed to a pivotal plot change in a storyline for said show.

41. (Previously presented) The system of claim 18, wherein said query is an Online Request.

42. (Previously presented) The system of claim 18, wherein said feedback message is filtered based on whether said message is responding to an editor-driven query, a director-driven query, a writer-driven query, or an Online Request.

43. (Previously presented) The system of claim 18, further comprising one or more character web portals, each character web portal corresponding to a character in said show.

44. (Previously presented) The system of claim 43, wherein each character web portal enables a user to purchase an item associated with the corresponding character.

45. (Previously presented) The system of claim 44, wherein said item is an article of clothing worn by said character in one or more shows in said show.

46. (Previously presented) An apparatus comprising:

a computer that transmits Internet queries to an audience of a broadcast show, wherein said broadcast show is one of a series of shows, with at least one subsequent show of said series of shows not yet broadcast, said Internet queries provided to said audience by way of a multi-tier question hierarchy comprising separate tiers of questions, each question assigned to a tier based on when chronologically the response generated by the question can be integrated into said broadcast show;

a computer that receives and stores responses to said Internet queries;

a computer that tracks each of said responses based on one or more characteristics of corresponding responders, said one or more characteristics comprising geographic area of responder, and

a computer for making storyline recommendations based on said responses, said recommendations based on one or more geographic areas of said responders,

wherein said computers may be one computer or a plurality of computers.

47. (Previously presented) An apparatus as in claim 46, wherein at least one geographic area receives a customized broadcast of a subsequent show in said series of shows, said customized broadcast being customized based on one or more of said storyline recommendations based on said geographic area.

48. (Previously presented) An apparatus as in claim 46, further comprising a computer for making storyline recommendations based on said responses, each of said storyline recommendations being associated with a corresponding responder characteristic, each group of viewers sharing said characteristic to receive a customized broadcast of a subsequent show in said series of shows, each said customized broadcast being customized based on one or more of said storyline recommendations for said characteristic.

Evidence Appendix

None.

Related Proceedings Appendix

None.